

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	
	§	
PETROLEUM TOWERS–COTTER, LLC,	§	CASE NO. 18-50197-RBK
	§	
DEBTOR	§	CHAPTER 11

MOTION TO VOLUNTARILY DISMISS CASE

TO THE HONORABLE RONALD B. KING, CHIEF UNITED STATES BANKRUPTCY JUDGE:

Now comes Petroleum Towers – Cotter, LLC, the Debtor-in-possession herein, by and through its counsel of record, who files this Motion to Voluntarily Dismiss Case, and would respectfully show the Court the following:

1. This Motion is filed pursuant to 11 U.S.C. §1112 and Fed. R. Bank. P. 1017.
2. On February 1, 2018, Petroleum Towers – Cotter, LLC (hereinafter, the “Debtor”) filed a Voluntary Petition for Relief under Chapter 11 of Title 11, United States Code. Debtor continues in possession of its property and it is operating and managing its business as a debtor in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.
3. The Debtor is a Delaware single member limited liability company with its principal place of business and all of its assets located in San Antonio, Texas. The Debtor owns and operates two eight-story commercial real estate office buildings with surrounding parking facilities on 9.601 acres, located at 8626 and 8700 Tesoro Drive, San Antonio, Texas, which are commonly known as “Petroleum Towers” (also referred to herein as “the Property”).
4. A purchase money mortgage secured by the Property is held by Broadway National Bank (hereinafter “Broadway”). Broadway filed fully secured Proofs of Claim herein in the amount of \$15,948,068.73 and \$347,142.11. The ad valorem property taxes assessed against the Property are current through the 2018 tax year. There are two mechanics’ and

materialman's liens which total \$190,593.24 and which were recorded pre-petition against the Property.

5. This is a single asset real estate bankruptcy case as defined by 11 U.S.C. §101(51B). Debtor's primary assets are the Petroleum Towers properties. Through the filing of this case, Debtor sought adequate time to market and sell the Property, as it was anticipated that a sale of the Property would facilitate the full administration of this bankruptcy estate.

6. The Court previously approved the employment of Cushman & Wakefield U.S., Inc. (hereinafter "C&W") as Real Estate Broker to represent the Debtor in connection with the sale of the Property (Doc. 31). C&W marketed the Property utilizing methods designed to obtain the highest and best offer for the same. C&W secured bids from potential buyers which were at or near the amount needed to pay the ad valorem taxes and most of the indebtedness owed to Broadway. However, the offers were not sufficient to pay other creditors likely to hold allowed claims in this case. In consultation with the Debtor's Broker, Debtor's representatives decided to continue to market the Property. Debtor also brought its notes with Broadway current in the interim.

7. After marketing the property for approximately one year, C&W procured a buyer that the Debtor's Broker and representatives agreed represented the highest or otherwise best offer for the Property – an entity known as Windmill Investments, LLC ("Windmill"). The parties executed an Agreement for Purchase and Sale (the "Agreement") in connection with the proposed sale of the Property on February 22, 2019.

8. On April 3, 2019, the Court entered an Order Approving Sale of Property of the Estate Free and Clear of Liens, Claims, Encumbrances and Interests (the "Sale Order") (Doc. 80). Among other things, the Sale Order approved the Agreement for the sale the Property to

Windmill for the purchase price of \$15,700,000.00. The Sale Order noted that the purchase price under the Agreement was insufficient to pay all of the claims which are secured by the Property. Therefore, the Debtor must obtain the consent of Broadway and the holders of the M&M liens in order to be able to close the Sale.

9. Thereafter, Debtor's representative executed certain requested amendments to the Agreement extending the inspection periods and closing date.

10. On June 21, 2019, the Debtor's and Windmill's representatives executed another amendment to the Agreement (the "Amendment") which provided the following material terms:

- A. The closure of the due diligence/inspection period under the Agreement;
- B. A contract price reduction from \$15,700,000.00 to \$15,025,150.00;
- C. An extension of the closing date to August 5, 2019; and
- D. An additional deposit of \$100,000 in earnest money with the title company engaged to close the sale which was deemed a non-refundable and earned extension fee. These sums are in addition to the \$135,000 originally deposited with the title company for the Petroleum Towers sale.

Thus, the Debtor essentially agreed to a 4.2% price concession in exchange for additional earnest money, the parties' agreement to make all of the earnest money non-refundable, and the agreement to move the contract past the inspection phase. With the expiration of the inspection period, the Buyer could thus focus on closing as the inspection matters have been thoroughly vetted at this point.

11. The price reduction set forth in the Amendment creates an even larger deficiency in the sums available to pay the claims which are secured by the property. Notwithstanding this fact, the Debtor and Broadway agree that the sale should move forward. However, in the event

that the sale is closed while the Debtor remains in a pending Chapter 11 bankruptcy case, the Debtor will incur an estimated United States Trustee fee in excess of \$148,000.00.

12. In light of the foregoing, the Debtor does not have the ability to confirm a plan of reorganization in this case. Further, closing a 363 sale during the pendency of this case would leave the Debtor with approximately \$148,000.00 less to pay the M&M lienholders who must be paid in order to provide clear title to the Buyer at closing.

13. Under section 1112(b) of the Bankruptcy Code, the Bankruptcy Court shall convert a case to chapter 7 or dismiss a case, whichever is in the best interest of the creditors and the estate, if the movant establishes cause, unless the Court finds that a chapter 11 trustee or examiner is in the best interests of the creditors and the estate or the Court finds and specifically identifies unusual circumstances that establish that conversion or dismissal of the case is not in the best interest of creditors and the estate. 11 U.S.C. § 1112(b).

14. In light of the foregoing facts, cause exists to dismiss this case. Conversion of the case to chapter 7 or appointing a chapter 11 trustee would result in an unnecessary delay in closing the sale of the Property and subject the estate to additional administrative costs that the Debtor cannot pay. Therefore, dismissal of the case followed by an immediate closing of the sale by the Debtor is in the best interests of this bankruptcy estate and is the option that provides payment of the largest amount of debt owed by the Debtor. Debtor's counsel has conferred with Broadway's counsel who advised that Broadway does not oppose dismissal of this case.

15. Section 349 of the Bankruptcy Code governs the effect of dismissal of a bankruptcy case. None of the items referenced in Section 349 would be implicated by the dismissal contemplated herein. However, in order to avoid any confusion, Debtor requests that

the Court provide in its dismissal order that prior rulings of this Court set forth in the Sale Order shall survive the dismissal of this case.

WHEREFORE, PREMISES CONSIDERED, the Debtor prays that the Court enter an order dismissing this case in the form submitted herewith, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

LAW OFFICE H. ANTHONY HERVOL
4414 Centerview Drive, Suite 207
San Antonio, Texas 78228
(210) 522-9500
(210) 522-0205 (Fax)

By: /s/ H. Anthony Hervol
H. Anthony Hervol
State Bar No. 00784264
Attorney for Debtor-in-possession

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing Motion has been served upon the parties listed below by the methods indicated hereunder, and to the parties on the attached mailing list (unless such parties are also listed on this Certificate), by United States Mail, First Class Delivery, postage prepaid, on this 8th day of August, 2019.

DEBTOR:

Petroleum Towers – Cotter, LLC
c/o Marcus P. Rogers, P.C.
2135 E. Hildebrand
San Antonio, Texas 78209
Via Electronic Mail, with consent

LIENHOLDERS OR POTENTIAL LIEN CLAIMANTS:

Bexar County
c/o its attorney,
Don Stecker
Linebarger Goggan Blair & Sampson, LLP
711 Navarro Street, Ste 300
San Antonio, Texas 78205
Via the Court's ECF Filing System

Broadway National Bank
c/o its attorney,
James A. Hoffman
LANGLEY & BANACK, INCORPORATED
745 E. Mulberry Avenue – Ste. 700
San Antonio, Texas 78212
Via the Court's ECF Filing System

Trane US, Inc.
Mark O. Anderson
Wagner, Falconer & Judd Ltd.
Fifth Street Towers
100 South Fifth Street, Suite 800
Minneapolis, MN 55402
*Via First Class Mail, postage pre-paid and
Electronic Mail*

Texas Chiller Systems, LLC
c/o its attorney,
J. Philip Collier
Law Office of Philip Collier
7800 I.H. 10 West, Suite 800
San Antonio, TX 78230
Via the Court's ECF Filing System

OTHER PARTIES REQUESTING NOTICE:

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Via the Court's ECF Filing System

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*Counsel for the Texas Comptroller of Public Accounts
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*Counsel for the Alliance Shippers, Inc.
Via the Court's ECF Filing System*

UNITED STATES TRUSTEE:
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Via the Court's ECF Filing System

/s/ H. Anthony Hervol _____
H. Anthony Hervol

Label Matrix for local noticing
0542-5
Case 18-50197-rbk
Western District of Texas
San Antonio
Mon Mar 25 11:15:53 CDT 2019

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San Antonio, TX 78209-6332

U.S. BANKRUPTCY COURT
615 E. HOUSTON STREET, ROOM 597
SAN ANTONIO, TX 78205-2055

Ace Sprinklers
8211 Ermington
San Antonio, TX 78254-2568

Affordable Venture Home Healthcare,
8626 Tesoro Drive, Suite 205-G
San Antonio, TX 78217-6217

Alamo Area Council of Governments
8700 Tesoro Dr #160
San Antonio, TX 78217-6221

Alamo Blinds, Shades & Shutters
1110 W. Basse Rd Ste.101
San Antonio, TX 78212-1003

(p)ALLIANCE SHIPPERS INC
516 SYLVAN AVENUE
ENGLEWOOD CLIFFS NJ 07632-3022

Alliance Shippers, Inc
8626 Tesoro Drive, Suite 525
San Antonio, TX 78217-6237

Allied Equipment, Inc.
8626 Tesoro Drive, Suite 400
San Antonio, TX 78217-6225

Alpha Terra Engineering, Inc.
8626 Tesoro Drive, Suite 810
San Antonio, TX 78217-6217

AmCan Equipment Rentals Inc
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Aslan Realty
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San Antonio, TX 78205-1749

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San Antonio, TX 78217-3746

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Broadway National Bank
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Broadway National Bank
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Clemens & Spencer
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8703 Botts Street
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9811 Cobb Street
San Antonio, TX 78217-3717

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Good Guys Remodeling & Landscaping
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National Tech, LLC.
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Phoenix Biotechnology, Inc. 8626 Tesoro Drive, Suite 801 San Antonio, TX 78217-6217	Plant Interscapes 6436 Babcock Rd San Antonio, TX 78249-2900	Pulman Cappuccio et al. c/o Randall A. Pulman 2161 NW Military Hwy., Suite 400 San Antonio, TX 78213-1844
Randy Cavazos 8626 Tesoro Drive, Suite 205-R San Antonio, TX 78217-6217	Real Estate Council of San Antonio 8626 Tesoro Drive, Suite 803 San Antonio, TX 78217-6217	Roto Rooter Plumbing & Drain Service P.O. Box 487 Newman Lake, WA 99025-0487
San Antonio Counseling and Behavior 8626 Tesoro Drive, Suite 202 San Antonio, TX 78217-6217	Sickle Cell Ass'n of Texas 8626 Tesoro Drive, Suite 205-J San Antonio, TX 78217-6217	SimplexGrinnell 50 Technology Drive Attn:Bankruptcy Westminster, MA 01441-0001
Statewide Patrol, Inc. 8626 Tesoro Drive, Suite 504 San Antonio, TX 78217-6217	Steve Villa Insurance Agency 8626 Tesoro Drive, Suite 814 San Antonio, TX 78217-6217	TIGTA 8700 Tesoro Dr, Suite 250 San Antonio, TX 78217-6208
Team Integrated Engineering, Inc. 8626 Tesoro Drive, Suite 430 San Antonio, TX 78217-6215	Texas Chiller Systems, LLC P.O. Box 792248 San Antonio, TX 78279-2248	Texas Chiller Systems, LLC c/o J. Philip Collier Law Office of J. Philip Collier 8023 Vantage Drive, Ste. 680 San Antonio, Texas 78230-4752
Texas Comptroller of Public Accounts Rachel R. Obaldo, Asst. Attorney General c/o Sherri K. Simpson, Paralegal P.O. Box 12548 Austin, TX 78711-2548	Texas Comptroller of Public Accounts c/o Office of the Attorney General Bankruptcy - Collections Division MC-008 PO Box 12548 Austin TX 78711-2548	The United States Marine Corp. 8700 Tesoro Dr #180 San Antonio, TX 78217-6208
Time for Taxes 8626 Tesoro Drive, Suite 205F San Antonio, TX 78217-6217	Total Com Management, Inc. P.O. Box 460230 San Antonio, TX 78246-0230	Trace Company P.O. Box 845053 Dallas, TX 75284-5053
Trane US, Inc. 3600 Pammel Creek Road La Crosse, WI 54601-7511	United States Attorney General Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0009	United States Attorney/IRS 601 N.W. Loop 410, Suite 600 San Antonio, TX 78216-5597
United States Trustee P.O. Box 1539 San Antonio, TX 78295-1539	United States Trustee - SA12 US Trustee's Office 615 E Houston, Suite 533 PO Box 1539 San Antonio, TX 78295-1539	Valeri Marie Cotter Zaharie 5743 E. Shoreline Post Falls, ID 83854-6855

Whitaker Insurance Association, Inc. 8626 Tesoro Drive, Suite 310 San Antonio, TX 78217-6289	Wilfrido Cabuto 2303 Oakline Dr. San Antonio, TX 78232-4683	Will's All Pro Plumbing & A/C 7847 Fortune Dr San Antonio, TX 78250-5108
Winsupply 520 N Virginia Oklahoma City, OK 73106-2630	Zavala Painting 3214 Chamita San Antonio, TX 78211-4518	H. Anthony Hervol Law Office of H. Anthony Hervol 4414 Centerview Dr, Suite 200 San Antonio, TX 78228-1442

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4) .

Alliance Shippers Inc
Robyn H Lefcourt
General Counsel
516 Sylvan Ave
Englewood Cliffs NJ 07632

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Pulman Cappuccio, et al. c/o Randall A. Pulman 2161 NW Military Hwy., Suite 400 San Antonio, TX 78213-1844	End of Label Matrix Mailable recipients 98 Bypassed recipients 1 Total 99
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